



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/152937

PRELIMINARY RECITALS

Pursuant to a petition filed October 21, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on November 19, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely, and if so, whether the agency properly determined the Petitioner FS benefits for the period of June 1, 2013 – October 30, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Jose Sylvestre
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
[REDACTED]

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Prior to June 1, 2013, the Petitioner was participating in W-2 activities and received W-2 benefits. On April 29, 2013, the Petitioner's employment ended.

3. On May 16, 2013, the agency issued a Notice of Decision to the Petitioner informing her that effective June 1, 2013, her monthly FS benefit would increase from \$126 to \$384. The notice informed her that because her W-2 benefits ended, she will get Transitional FS until October, 2013. The notice indicated that her FS benefit was based on earned income of \$560 every other week from [REDACTED] and \$793.78/month from SSI. The notice further informed her of the right to appeal the agency determination by filing an appeal with the Division of Hearings and Appeals by September 3, 2013.
4. On October 22, 2013, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits will be \$750/month effective November 1, 2013.
5. On October 21, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

A hearing officer can only rule on the merits of a case if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action concerning FS must be filed within 90 days of the date of that action. 7 C.F.R., § 273.15(g). A negative action can be the denial of an application or the reduction or termination of an ongoing case.

In this case, the agency increased the Petitioner's FS benefits in June, 2013 when she moved into Transitional FS benefits after her W-2 benefits ended. She learned in October, 2013 that she could have been eligible for more benefits if she had declined the Transitional FS benefits and applied for "regular" FS benefits. The applicable policy regarding the calculation of Transitional FS benefits is as follows:

The TFS allotment is calculated using the income (less the W2 payment), expenses, and food group size from the month prior to the last W-2 cash payment (benefit determination month). This amount is frozen for the next 5 consecutive months, regardless of the number of months remaining in the most recent certification period for regular FS. A new 12 month certification period will begin when the household reapplies and is eligible for FS at the end of the TFS benefit period.

If a change is reported or becomes known to the agency, the change will acted upon at time of reapplication at the end of the TFS benefit period.

FS Handbook § 5.1.1.2.

In this case, the agency properly calculated the TFS based on the Petitioner's income, expenses and FS group size from the month prior to the last W-2 cash payment. This amount was frozen for the next 5 consecutive months even when the Petitioner's employment subsequently ended. The Petitioner argues that she was not informed that she would receive more benefits if she declined TFS.

The agency did not take a negative action against the Petitioner. It did not deny or reduce or terminate her benefits. It properly calculated the TFS benefits in accordance with the policy. Even if the agency's action in calculating the TFS effective June 1, 2013 was a negative action, the Petitioner's appeal is not timely. It was filed 108 days after the action. Therefore, no jurisdiction exists to consider the merits of the appeal.

CONCLUSIONS OF LAW

The agency did not take a negative action against the Petitioner. The Petitioner's appeal was not timely. Therefore, no jurisdiction exists to consider the merits of the case.

THEREFORE, it is

ORDERED

That the petition be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 11th day of December, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 11, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability